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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1956

No. 94

WILLIAM RADOVICH,
Petitioner,

vs.

NATIONAL FOOTBALL LEAGUE, BERT BELL, J. RUFUS KLAWANS, BOSTON YANKS, NEW YORK RANGERS, NEW YORK GIANTS CLUB, PHILADELPHIA EAGLES, THE LOS ANGELES RAMS FOOTBALL CLUB, INC., PITTSBURGH STEELERS FOOTBALL CLUB, WASHINGTON REDSKINS, CHICAGO BEARS FOOTBALL CLUB, INC., CHICAGO CARDINALS FOOTBALL CLUB, DETROIT LIONS FOOTBALL CLUB, GREEN BAY PACKERS, SAN FRANCISCO CLIPPERS, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITIONER'S REPLY BRIEF.

I.

NEITHER THE DECISIONS OF THIS COURT, THE DOCTRINE OF STARE DECISIS, CONGRESSIONAL INTENT, NOR THE ALLEGATIONS OF THE COMPLAINT, SUPPORT THE EXTENSION OF FEDERAL BASEBALL TO ORGANIZED PROFESSIONAL FOOTBALL.

Respondents have urged on this Court the very arguments which were rejected in the *International Boxing* decision. They admit that they are not *exempt* from the application of the antitrust laws. But they urge that *Federal Baseball* (259 U. S. 200) is to be broadly interpreted so as to constitute a determination, not that football is not an interstate business, but that conduct forbidden by the antitrust laws is not to be subject to a hearing on the merits. They urge, in effect, that any complaint under the antitrust laws which concerns the "reserve clause" and its enforcement, in whole, or as part of a monopolistic plan and conspiracy in restraint of trade, must be dismissed as a matter of law.

But *International Boxing* decided the following in complete response to such assertions: (1) *Federal Baseball* is limited to the "business of baseball" (2) No business can urge reliance on *stare decisis* from *Federal Baseball* because less than a year after its decision, the Supreme Court in *Hart v. B. F. Keith Vaudeville Exchange* (262 U. S. 271) expressly established that *Federal Baseball* could not be relied on as a basis of exemption for other businesses, athletic or otherwise. (3) That Congressional intent could not support attempts to obtain immunity from judicial enforcement of the antitrust laws by those engaged in athletic businesses because Congress specifically re-

fused to pass legislation which would have resulted in such foreclosure (see *U. S. v. International Boxing Club of N. Y.*, 348 U.S. 236 at 242-245).

The basis of the decision below was simply the thought that if Congressional indulgence extended to and saved baseball it should also extend to and save all team sports (R. 76). Respondents' briefs may attempt to claim that the Court below studied the "aspects" of the games of football and baseball, (National Football Leagues' Brief, pp. 21-22 (hereinafter alternatively referred to as N. F. L., as distinguished from the Pacific Coast League, hereinafter alternatively referred to as the P. C. L.), but petitioner notes that the only basis to support the concept of Congressional indulgence, as used by the Court below, was simply that baseball and football are both team sports.

Respondents seek immunity from a conspiracy to monopolize the business of football, from a conspiracy to exclude competition, from a conspiracy to boycott, from a conspiracy to perpetuate an unreasonable restraint of trade, from a conspiracy to place players under bondage, and from a conspiracy to ruin a trader.

U. S. v. South-Eastern Underwriter's Ass'n, 322 U. S. 533, is a holding that Congress is presumed to have exercised all the power it possesses under the Commerce Clause in the antitrust laws to the result that all interstate activities must be presumed by the judiciary to be included under the antitrust laws.

International Boxing is the application of this doctrine to the respondents. (*Cf. Washington Professional Basketball Corp. v. Nat'l Basketball Association*, C. C. H. 1956 Trade Cases, 68,560; holding professional basketball subject to the antitrust laws).

International Boxing is an emphatic assertion that what is alleged by petitioner is prima facie actionable under the antitrust laws. This is noted by a comparison of the averments of the United States in the *Boxing* case, with petitioner's complaint.

International Boxing	Radovich
(348 U.S. 236, at 230-240) "by eliminating the 'leading competing promoter' of championship matches"	Agreements of National Football League and Pacific Coast League to eliminate the All America Conference (R. 14, 16).
"by acquiring the exclusive right to promote professional boxing contests in all the 'principal arenas' where championship matches can be successfully presented"	N.F.L. operates in the major cities of the United States, principally located in the eastern part of the country. The minors operate elsewhere (R. 4-6).
"by requiring each title contender to agree as a condition of fighting for the championship, that if he wins he would, for a period of three (and sometimes five) years, take part only in title contests promoted by the defendants."	The concerted adoption of a nationwide player contract which reserves a player for life and subjects him to boycott and ban (R. 10, 16). The agreement of the Pacific Coast League to enforce the reserve clause and boycott (R. 14-15).

The District Court's ruling was decided before *International Boxing* and after *Toolson*. The citation of authority by the District Court indicated that it based its decision solely on jurisdictional grounds (R. 64).

Answers and extensive pretrial discovery had been undertaken in this action under the complaint (R. 65-68). The answers of respondents denied a boycott of petitioner after an offer of employment had been extended to him by the San Francisco Clippers (R. 37-39, 55). The respondents, further, in their answers alleged that they were not conspirators but were entirely independent of the other (R. 37-39, 51, 52). Thus the Court of Appeals below was confronted not only with the complaint of the petitioner, as is the usual situation under a motion to dismiss for failure to state a claim for relief under F. R. C. P., Rule 12(b), but with bona fide answers which placed denials and admissions before the Court.

It can be seen that the respondents have placed in issue, not only the application of the reserve clause between their constituent members, but the enforcement of the reserve clause by blacklist and boycott aimed at preventing petitioner from obtaining employment with the San Francisco Clippers, a team non-competitive to the N. F. L. and asserted to be of minor status (R. 37). The end result of the respondents' plans, was not to promote competition on the playing field between members of the N. F. L. but to extend their power extra-territorially so as to prevent petitioner from playing football anywhere in the United States even to the extent of depriving him of bona fide demands for his services by a minor league (R. 14-15). The San Francisco Clippers was never included in the N. F. L. scheduling, and indeed the N. F. L. did not have a member club in San Fran-

cisco at the time the alleged boycott and ban took place (R. 5-6).

The rule applied on a motion to dismiss is that a complaint should not be dismissed for insufficiency unless it appears to a certainty that plaintiff is entitled to no relief under any state of facts which could be proved in support of the claim. Moore's Federal Practice, Vol. 2, Second Edition, § 1208, p. 2245. *U. S. v. Employing Plasterer's Ass'n,* 347 U.S. 186 (1954).

The complaint of petitioner names the following parties as conspirators in violation of the antitrust laws (R. 5):

Bert Bell,
Commissioner of the N.F.L.
The constituent teams play at:
New York
Philadelphia
Los Angeles
(after 1945)
Pittsburgh
Washington, D. C.
Chicago
Detroit
Green Bay

J. Rufus Klawans,
Commissioner of the P.C.L.
The constituent teams play at (R. 5):
Salt Lake City
Los Angeles
(then to Long Beach)
San Francisco
(and see R. 51-52)

The allegations of conspiracy establish that the National Football League and the Pacific Coast League, as conspirators in restraint of trade, and as conspirators attempting to monopolize the business of football (R. 9) recognized the uniform players' contract of the National League, agreed to employ said contract which prevented the player from ever switch-

ing to constituent clubs or other leagues, and agreed to recognize each others blacklists and bans (R. 10). They agreed to control, regulate and dictate the terms upon which professional football shall be played throughout the United States (R. 9). These conspiracies and plans effected the suppression of competition, the suppression of petitioner, the elimination of competition between themselves, the prevention of competition from the All America Conference, and the placing of football players in a condition of bondage (R. 16).

It is obvious that the arguments presented by respondents that their activities are solely related to promotion of competition on the playing field are refuted by their own answers. Each respondent asserts that the Pacific Coast League and the National Football League were entirely independent of each other. The National Football League would then have no just reason to prevent petitioner from playing with the Pacific Coast League, an independent league of minor status, and unconnected with its scheduling.

So it is that respondents cannot claim or pretend to assert that petitioner's complaint does not set forth the following set of facts which on a motion to dismiss he may urge in support of his claim:

(1) Petitioner has alleged that he was injured as part of a plan to monopolize the business of football by exclusion of the All-America Conference, by the elimination of competition between the two sets of defendants and by the elimination of competition between the constituent members of each league.

The divisional affiliation of the Pacific Coast League with the N. F. L. would clearly cause the following in the business of ~~baseball~~: (a) it would give far western application to the uniform agreements of the members of the National Football League; (b) it would prevent bidding for the services of players by the members of the two leagues; (c) it would give extra-territorial sanction to the enforcement of the blacklists, boycotts and bans of the National Football League; and (d) it would cement two putative competitors to allow a greater economic power to eliminate the All America Conference.

Thus the blacklist, boycott and ban occurred to petitioner after he had played football for the All America Conference (R. 14). They involved an extra-territorial application of the rules of the National Football League into San Francisco, a city where it had no member club (R. 5-6). They prevented petitioner from obtaining a job with the San Francisco Clippers which desired his services. For petitioner to have accepted employment with the San Francisco Clippers would in no conceivable way interfere with the promotion of competition on the playing field as to either set of defendants. As to the National Football League, he would not have any inter-scheduling with them. As to the Pacific Coast League, he would

aid and help strengthen their league. It is clear why respondents denied the averments of this blacklist, boycott and ban and why they now seek to obscure the issue (N. F. L. Brief, p. 51, p. 59).

The consequences of playing with the competitive All America Conference is apparent by the unjustified and intentional plan to ruin petitioner's football career. Injury to petitioner was clearly imposed as part of the plan to fight the All America Conference by agreement to give extra territorial sanction to the rules adopted by the N. F. L. by means of divisional alliances so as to deter players from becoming free agents.

This action unmistakenly concerns a period of time when the respondents were engaged in the monopolization of the business of football and a "trade war" against the All America Conference (R. 14, 45-49). In this period of time, the football player was forced to become part of the war to destroy this Conference. In this period of time, petitioner was subject to a boycott and ban in testing the very purpose and intent to which the uniform players contract with its reserve clause were being used. Petitioner supplies the answer to the very question that respondents pose. Was the reserve clause and agreements to enforce it being used to promote competition on the playing field or was it used as a threat and economic sanction as part of a plan to monopolize the football business? When the respondents applied economic sanctions against petitioner who was offered a job with a team noncompetitive to the N. F. L., and admittedly of minor

status, their actions belie their words. Petitioner had played with the All America Conference, and this caused the application of extra-territorial sanction and enforcement to the agreed upon reserve clause system. The resultant purpose of respondents was not to promote competition on the playing field, but to destroy one who refused to be used as a means to perpetuate a conspiracy aimed at excluding a competitor.

(2) Petitioner has alleged a conspiracy to boycott in interstate commerce perpetrated by the respondents.

A contract which requires a trader to bind himself to one business for life, unlimited as to time and territory, and enforced by the sanction of agreements between constituent club owners, and potential competitors is an unreasonable restraint of trade. Petitioner has clearly alleged a conspiracy to adopt a restraint of trade on football players unreasonable as a matter of law. *U. S. v. Addyston Pipe and Steel Co.*, 85 Fed. Supp. 271, at 280-282. Respondents admit that the *Addyston* case correctly sets forth the conditions under which covenants in *partial* restraint of trade may be subject to judicial allowance of the defense of reasonableness. The covenant must be ancillary, it must be partial and it must be supported by consideration (id). A restraint imposed on a person unlimited as to time and territory is an unreasonable restraint of trade. Id, and see also *Oregon Steam Navigation Co. v. Winsor*, 87 U. S. 64 (1874).

The boycott and ban exercised against petitioner involved a third element of illegality. The respondents sought not only to use an unreasonable reserve clause

by conspiracy but also combined and conspired to place a boycott in the channels of interstate commerce. Knowing the inherent invalidity of their player restrictions, respondents applied extra-judicial means and methods of enforcement. They assumed a sovereign's prerogative. Such assumption and the surrender of potential competitors to the rules of the N. F. L. is in violation of the antitrust laws. *Fashion Originator's Guild v. F. T. C.* 312 U. S. 457 (1941); *Anderson v. Shipowner's Association of the Pacific,* 272 U. S. 359 (1926).

(3) The reserve clause structure of football is a price fixing combination which is supported by extra-territorial affiliation and lacks true consideration.

Petitioner emphasizes that the Court below conducted no factual examination into the aspects of football and baseball, but simply noted that each was a team sport.

But respondents see fit to shout into the record the conditions of baseball and request comparison with football. Petitioner asserts two basic distinctions between baseball and football: (1) affiliation between the National Football League and minor leagues has no connection to the development of player talent. These affiliations are simply agreements not to compete for territories, agreements not to vie for player talent and agreements to allow nationwide power to the economic sanctions of blacklist, boycott and ban. Baseball's major-minor league affiliation is supported by the farm system whose purpose is the development

of player talent. (2) Baseball allows free bidding upon a player's initial entry into the business. Football operates by means of a "player draft".

The purpose of affiliation between the National Football League and minor leagues cannot be related to the development of player talent. Football talent is developed by the colleges and not by minor leagues. Affiliation between football leagues which do not schedule each other then must involve agreements not to compete between potential competitors.

Alliance between potential competitors in the football business mean the existence of agreements not to compete for territories, agreements to give nationwide application to blacklist, boycott and agreements to cement group power in favor of the affiliates over outside competitors. Affiliation of the Pacific Coast League and the National Football League has not the remotest connection to the development of player talent. The structure of football is such that it is simply and openly a price fixing combination. A baseball player has a free market to enter into. There is bidding between baseball club owners for his services. The baseball bonus baby is a well known figure of the sport pages. Generally the young baseball player after free selection and free bidding, enters into a farm club of a major league baseball club, and is developed from Class League to Class League to the polished major league player.

It is true that as he develops there is no competitive bidding for his services, but the initial free market

was in his favor in that he is the subject of competitive bidding.

Football, on the other hand, places the names of college players, famous and from minor colleges, into a hat by means of a player draft. There is no free market upon the players' entry into football. He is "drafted" by one club, and the Constitution and By-Laws of respondents through the Uniform Players Contract prevents any bidding between football club owners. The football player is given no consideration to have his name placed on the "draft list". He is told by the National Football League that he must play with one team and that no other team will bid for services. He must either play with one club at the owner's price, or go to Canada. Affiliates have agreed not to compete with the N. F. L.'s draft. The agreed upon football draft does not guarantee the drafted football player, he will play football *at any salary*. He is forced to "try out" for his draftor *without salary*. Before he may try out, however, he must sign the Uniform Players Contract. He thus must sign the reserve clause contract *without consideration*. More football players are drafted than can be used in the actual championship season. The football player thus must first try out for the exhibition season *without salary*. If he makes the initial squad of players which can play for the owner, he is then forced to play all exhibition games, generally running from August to and including mid-September, *without salary*. If subsequently he is forced out of the initial drafting club when it must finally cut its team down

to 35 players after the exhibition season, he does not receive any salary for his services either for (1) placing his name on the draft list, (2) for the try-out period, (3) for the reserve clause he is forced to sign before reporting for training camp, and (4) for exhibition games. These conditions apply to more football players who do *not* play football than who do.

If the football player makes the team, he is obligated to stay with his original draftor for life by means of one year options unless waived out, or sold or traded. The owner sets his salary on exercise of the option, and the player must agree to allow the owner another option. Clearly the football player has been placed in a condition of bondage without adequate consideration to support unreasonable restraints on his occupation. The anti-trust laws condemn restraints on services as well as commodities. *U. S. v. National Ass'n of Real Estate Boards,* 339 U. S. 485 (1950). Restraints on occupation are the very base of the anti-trust laws. *U. S. v. Addyston Pipe and Steel Co.* (6th Cir., 1899), 85 Fed. 271, aff'd 175 U. S. 211 (1899). They condemn the exercise of group power to the oppression of the trader. *Mandeville Island Farms Inc. v. American Crystal Sugar Co.,* 334 U. S. 219 (1948).

(4) Petitioner has alleged a nationwide plan to oppress and ruin his business by conspiracy and combination using means forbidden by the antitrust laws.

There is not the slightest pretense by respondents to justify a boycott and ban against petitioner which prevented the San Francisco Clippers from using his

needed services. Such means are unreasonable per se. The Pacific Coast League by respondents own admissions was not a constituent member of the N. F. L. (R. 37-39, 51).

The ruination of a trader is manifestly cognizable under the antitrust laws. See Senate Debates, 21 Cong. Record as to Senate Bill No. 3445, and Senate Bill No. 1. *City of Atlanta v. Chattanooga Pipe and Foundry,* 203 U. S. 390 (1906); *Binderup v. Pathe Exchange,* 263 U. S. 291 (1923); *U. S. v. Addyston Pipe and Steel Co.,* supra.

II.

A PURPOSE OF THE ANTITRUST LAW IS TO INSURE THE FREE ENTRY OF GOODS AND SERVICES IN ANY PART OF INTERSTATE COMMERCE, IN EVERY LEVEL OF DISTRIBUTION, TO EVERY ASPECT OF A TRADE AND COMMERCE, TO EVERY TRADER AND TO EVERY FORM OF BUSINESS ORGANIZATION.

The Sherman Act insures a free economy and commands that a free market will control and regulate industry so that no group or combinations will have authority to displace the free market. Most agreements between competitors are per se in restraint of trade, discussed below, and whether or not a concert in restraint of trade is reasonable can only be determined after an extensive factual inquiry. *Standard Oil Co. of N. J. v. U. S.,* 221 U. S. 1 (1911); *Board of Trade v. U. S.,* 246 U. S. 231 (1918); *U. S. v. Addyston Pipe and Steel Co.* (6th Cir., 1899), 85 Fed. 271, aff'd 175 U. S. 211.

The term "public protection" is susceptible of two interpretations. As used in petitioner's opening brief it has been used in the sense that it is erroneous to assert that there must be alleged "substantial injury to the general public" apart from alleging a violation of the antitrust laws (Petitioner's opening brief, p. 19). In another sense the term may mean that any undue restraint on the freedom of trade violates protection to the public which a free economy insures. That the antitrust laws are concerned with public protection arising from threatened injury to the competitive system Congress seeks to maintain is not denied. But that public protection is accorded only by a decrease in the quality or quantity of a commodity or service or through an increase in prices is unsupportable (N. F. L. Brief, p. 59).

For the antitrust laws are all-comprehensive protecting all who are made victims of forbidden practices by whomever they may be perpetrated. *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 219, 236 (1948).

In addition to the categories of per se restraints of trade claimed to be involved under the antitrust laws by respondents; this Court has declared that inter alia, the following are within Congressional condemnation: (1) agreements among employers to regulate the terms of employment, *Anderson v. Shipowner's Ass'n of the Pacific*, 272 U. S. 359 (1926); (2) group boycott, *Fashion Originators' Guild v. F. T. C.*, 312 U.S. 457 (1941); *Times-Picayune Pub. Co. v. U. S.*, 345 U. S. 594, 625 (1953); (3) the destruction of a trader,

Binderup v. Pathe Exchange, 263 U. S. 291 (1923); *Story Parchment v. Patterson Paper Co.*, 282 U. S. 555 (1931); *Moore v. Meads Fine Bread Co.*, 348 U. S. 115 (1955); (4) the obtaining of less than fair market value for services rendered by concerted action or monopoly power. *Mandeville Island Farms, Inc. v. American Crystal Sugar Co.*, 334 U. S. 219 (1948); (5) the exclusion of competitors from the market, *U. S. v. International Salt Co.*, 332 U. S. 392 (1947); (5) Discrimination between customers by concert of action, *Bigelow v. R. K. O.*, 327 U. S. 251 (1946); (6) the refusal of one with substantial power to offer equal treatment, *U. S. v. Griffith*, 334 U. S. 100 (1948). See also *American Federation of Tobacco Growers v. Neal* (4th Cir., 1950), 183 F. 2d 869; *Gamco v. Providence F. and G. Co.*, (1st Cir., 1952), 194 F. 2d 484; *Greenleaf v. Brunswick-Balke-Collender Co.* (D. C. Pa. 1947), 79 Fed. Supp. 362.

To be sure, the antitrust laws are often used to strike down at combinations which involve urgent public protection, *U. S. v. Hartford Empire Co., et al.*, 323 U. S. 386 (1945), but they also strike restraints in any part of interstate commerce even though involving free access in small local areas. They apply to any part of the distributive system. *U. S. v. Lorain Journal*, 342 U. S. 143 (1951); *Indiana Farmers Guide Publ. Co. v. Prairie Farmer P. Co.*, 293 U. S. 268 (1934); *U. S. v. Women's Sportswear Mfgrs. Ass'n.* 336 U. S. 460 (1949). Petitioners assert that they are "quasi partners" and exempt from violation of the antitrust laws because it is a "reasonable" restraint of

trade to allow partners, pending a partnership, to arrange business terms (id, pp. 53-56). This assertion, of course, is contrary to the principle that competitors cannot impose restraints in an industry under the guise of common protection. *U. S. v. Associated Press*, 326 U. S. 1, *Fashion Originators' Guild v. F. T. C.*, 312 U. S. 457 (1941); *U. S. v. Masonite Corp.*, 316 U. S. 265 (1942); *Timken Roller Bearing Co. v. U. S.*, 341 U. S. 593 (1951). Good intentions, business expediency, public motives are no defense to restraints of trade imposed by combinations (id.).

The argument that the public must be adversly affected by an association of industry units, allegedly made for the purpose of mutual protection in order to sustain liability under the antitrust laws, was specifically addressed to this Court and rejected. In the *Associated Press* case, where newspaper publishers agreed to withhold its news service from competitors, the argument was made that there was no harm to the public, and hence no liability, since their newspapers covered most of the United States and the public had access to the defendants' services. This Court stated at 326 U. S. 1, p. 18:

> "We reject these contentions. The proposed indispensability test would fly in the face of the language of the Sherman Act and all of our previous interpretations of it. Moreover, it would make that law a dead letter in all fields of business, a law which Congress has consistently maintained to be an essential safeguard to the kind of private competitive business economy this country has sought to maintain".

In the *Fashion Originators' Guild* case this Court specifically rejected the arguments that the association (there designed to end style piracy), was not within the policy of the antitrust laws because it did not combine to fix prices, limit production, or bring about a deterioration in the quality of merchandise. The Court stated at 312 U. S. 457, 466-467:

> "Petitioners, however, argue that the combination cannot be contrary to the policy of the Sherman and Clayton Acts, since the Federal Trade Commission did not find that the combination fixed or regulated prices, parcelled out a limited production, or brought about a deterioration in quality. But action falling into these three categories does not exhaust the type of conduct banned by the Sherman and Clayton Acts. For as this Court has said, 'Trade or commerce under these circumstances may nevertheless be badly and unfortunately restrained by driving out of business the small dealers and worthy men whose lives have been spent therein, and who might be unable to readjust themselves to the altered surroundings. Mere reduction in price of the commodity dealt in might be dearly paid for by the ruin of such a class and the absorption of control over one commodity by an all powerful combination of capital.' *U. S. v. Trans-Missouri Freight Assoc.*, 166 U.S. 290, 323; 17 S.Ct. 540, 552; 41 L. Ed. 1007."

III.

THE CLAYTON ACT, §6, §20 AND THE NORRIS-LaGUARDIA ACT ARE CONCERNED ONLY WITH THE RIGHTS OF LABOR TO COMBINE TO OBTAIN THEIR OBJECTIVES.

Petitioner's complaint is concerned with the monopolization of the football industry, the conspiracy effectuated by the affiliation with the National Football League and the Pacific Coast League, a group boycott and ban in the free flow of interstate commerce, the placing of football players in a condition of bondage, and a conspiracy aimed, not at terms and conditions of employment, but aimed at the complete severance and ruination of petitioner's association with the football business.

Respondents assert the applicability of statutes whose only purpose and effect is to remove the conduct of trade unions from the antitrust laws, and to protect the status of legitimate collective bargaining. *U. S. v. Hutcheson,* 312 U. S. 219, 236 (1940). It is noted that the labor law issue presented by respondents was neither raised in the Court of Appeals below or in opposition to the petitioner's writ for certiorari. Respondents should not seek to obtain the protection of these statutes under these conditions. *Morley Construction Co. v. Maryland Casualty Co.,* 300 U. S. 185 (1937).

The contentions of the respondents that the Clayton Act, and the Norris-LaGuardia Act immunize this action have been answered in *Allen Bradley Co. v. Local Union No. 3,* 325 U. S. 797, at 810.

> "Seldom, if ever, has it been claimed before that by permitting labor unions to carry on their ac-

tivities, Congress intended completely to abdicate its constitutional power to regulate interstate commerce and to empower interested business groups to shift our society from a competitive to a monopolistic society."

Thus not only have labor unions *not* been granted antitrust exemption from these sections, but employers have not been allowed to excuse their conduct on the spurious contention that the action involved employee relations. As was stated in *U. S. v. Women's Sportswear Mfgrs. Ass'n*, 336 U. S. 460, 464:

"... benefits to organized labor cannot be utilized as a cats-paw to pull employers' chestnuts out of the antitrust fires."

See *U. S. v. American Medical Association*, 317 U. S. 519 (1943), 535-536; *Columbia River Packer's Ass'n v. Hinton*, 315 U. S. 143 (1942); *U. S. v. Employing Plasterer's Ass'n*, 347 U. S. 186 (1955).

IV.

PETITIONER'S INJURY IS WELL PLEADED.

Petitioner has clearly alleged an action under the antitrust laws and has pleaded his injury and damage with particularity. *C. E. Stevens Co. v. Foster and Kleiser Co.*, 311 U. S. 255 (1940).

The plain purpose and effect of the respondents' scheme was to injure petitioner, and he has alleged his injury. Those who have violated the antitrust laws are not allowed to escape liability on the grounds that

their conduct has made damages incapable of exact ascertainment, let alone demand a dismissal of a complaint for failure to assert affirmative defenses. *Bigelow v. R. K. O.*, 327 U. S. 251 (1946); *Story Parchment Co. v. Patterson Parchment Paper Co.*, 282 U. S. 555 (1931); *Eastman Kodak Co. v. Southern Photo Material Co.*, 273 U. S. 359 (1927). See also *Package Closure Corp. v. Sealright Co.*, (2nd Cir., 1944) 141 F. 2d 972.

CONCLUSION.

To summarize, the petitioner has pleaded per se violations of the antitrust laws which have been foreclosed from inquiry into the merits by the Court below in contradiction to the *International Boxing* case. Respondents argue that the promotion of competition on the playing field makes all their activities reasonable as a matter of law. But the conduct alleged by petitioner cannot be tested with such a defense.

There are alleged the following: (1) that the aim and purpose of respondents was to control and dominate the business of football; (2) that they sought to exclude a competitor; (3) that they affiliated as part of a conspiracy to bring about these objectives; (4) that they entered into an affiliation agreement which prevented petitioner from playing or coaching football with an otherwise putative competitor, the Pacific Coast League; (5) that they burdened interstate trade and commerce by boycott and ban; (6) that they perpetrated restraints on occupation unreasonable as to time and territory and enforced these re-

straints by boycott and blacklist and ban; (7) that these restraints were aimed at the exclusion of a competitor and were given nationwide application beyond the area of operation of the N. F. L.

The argument that it is desirable to present teams of equal strength can afford no justification for respondents' violation of the antitrust laws to the ultimate result of boycotting petitioner from playing or coaching football with the San Francisco Clippers, a team non-competitive to and not a constituent member of the National Football League and which desired his services.

Petitioner respectfully submits that there exists federal jurisdiction over petitioner's complaint under the antitrust laws and that the Court below erred in dismissing his action as a matter of law.

Dated, January 11, 1957.

Respectfully submitted,

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